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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,116	08/06/2003	John G. Waclawsky	CIS03-47(1324)	2068
47654	7590	05/11/2007	EXAMINER	
DAVID E. HUANG, ESQ. BAINWOOD HUANG & ASSOCIATES LLC 2 CONNECTOR ROAD SUITE 2A WESTBOROUGH, MA 01581			NGO, NGUYEN HOANG	
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/635,116	WACLAWSKY ET AL.
	Examiner Nguyen Ngo	Art Unit 2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 August 2003.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 34-66 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 34-66 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. Claims 28-45, 50-55, 60-65 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Claims 28-45, 50-55, 60-65 recites the limitation "the reply signal". There is insufficient antecedent basis for this limitation in the claim.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b)

4. Claims 34-43, 44, 45, 46-66 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20, 33, 34 of

U.S. Patent No. 6628610. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 34 is a broader version of patent claim 1.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 34-37, 46-49, and 56-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Waclawsky (US 6449255), hereinafter referred to as Waclawsky.

**Regarding claim 34, 46, 56,** Waclawsky discloses a method for managing a flow of packets (manages packets in a data communication device, abstract), comprising:

transferring packets of a particular packet flow based on an initial policy scheme (the data communications device transmit an initial set of packets (packets with an initial policy scheme) which are monitored, col3 lines 10-15). Input scheduler 116 of figure 7 correlating to a transfer circuit;

planning a scheme change to change the initial policy scheme to a new policy scheme based on transfer conditions within the data communications device existing while transferring the packets of the particular flow based on the initial policy scheme

(the traffic monitor provides a real time feedback signal indicating transmission information (transfer conditions) regarding the initial set of packets (initial policy scheme), col3 lines 15-22). Central traffic analyzer 122 of figure 7 correlating to controller; and

providing a change signal to a source of the particular packet flow, the change signal indicating that the data communications device has planned the scheme change (the data communication device manipulates a new set of packets within its memory based on the real time feedback signal (change signal), col3 lines 15-22). Traffic monitor 26 of figure 7 correlating to feedback circuit.

**Regarding claim 35, 47, 57** Waclawsky discloses the method of claim 34 wherein the initial policy scheme is an initial packet dropping scheme for dropping packets from the particular packet flow, and wherein the new policy scheme is a new packet dropping scheme for dropping packets from the particular packet flow in a manner that is different than that of the initial packet dropping scheme (unable to achieve TOS goals and discards packets in such situations in order to achieve such goals, col6 lines 54-65).

**Regarding claim 36, 48, 58,** Waclawsky discloses the method of claim 34 wherein the initial policy scheme is an initial packet scheduling scheme for scheduling packets of the particular packet flow for transmission, and wherein the new policy scheme is a new packet scheduling scheme for scheduling packets of the particular packet flow for transmission in a manner that is different than that of the initial packet scheduling

scheme (input scheduler controls the size of each queue in an on the fly manner based on a real time feedback signal, col6 lines 20-30).

**Regarding claim 37, 49, 59** Waclawsky discloses the method of claim 34 wherein the initial policy scheme is an initial packet classification scheme for classifying packets of the particular packet flow, and wherein the new policy scheme is a new packet classification scheme for classifying packets of the particular packet flow in a manner that is different than that of the initial packet classification scheme (reorder manager controls the prioritization of the queues within the queue structure, col6 lines 40-50).

#### ***Allowable Subject Matter***

7. Claims 38-45, 50-55, and 60-66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a) Hanson et al. (US 5633861), Traffic Management And Congestion Control For Packet Based Networks.

b) Zavalkovsky et al. (US 6822940), Method and Apparatus For Adapting Enforcement Of Network Quality Of Service Policies Based On Feedback About Network Conditions.

c) Hata et al. (US 6987730), Transmission Apparatus And Method For Changing Data Packets Priority Assignment Depending On The Reception Feedback.

d) Murase (US 6388994), Traffic Rate Controller In A Packet Switching Network.

e) Takeuchi (US 6208619), Packet Data Flow Control Method And Device

f) Hatono et al. (US 5914936), ATM Exchange Performing Traffic Flow Control.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nguyen Ngo whose telephone number is (571) 272-8398. The examiner can normally be reached on Monday-Friday 7am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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SUPERVISORY PATENT EXAMINER

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